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OFFICE OF THE CHAIRMAN

August 24, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: *Ex Parte Filing* in cases WT 99-217; CC 96-98

Dear Chairman Kennard:

Please do not adopt the rule proposed in these cases allowing any phone company to serve any tenant of a building and to place their antenna on the building roof. In some states, 70 or more new phone companies have been certificated to provide service. Add in the wireless phone companies, and under your rule you may have 100 companies allowed to place their wires in a building, and their antennas on the roof – all without the landlord's permission.

The FCC lacks the authority to do this. It would violate basic property rights – a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country. The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction, which under Federalism and the Tenth Amendment you may not preempt.

For example, building codes are imposed in part, for engineering related safety reasons. These vary by region, weather patterns and building type; such as the likelihood of earthquakes, hurricanes, and large amounts of snow and ice. If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants, or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety, and welfare; ensure compatibility of uses; and preserve property values and the character of our communities. We may restrict the numbers, types, locations, size, and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns, which we do every day, with

success. Everyone wants garbage picked up, but no one wants a landfill. Everyone wants electricity, but no one wants a substation near his or her home.

The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, from municipality and within municipalities. We have successfully applied these principles and balanced competing concerns for eighty years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record, that there are problems on such a massive scale with the 38,000 units of local government in the U.S. as to warrant Federal action.

On rights-of-way, local management of them is essential to protect the public health, safety, and welfare. Congress has specifically prohibited you from acting in this area. We believe the telephone providers' complaints about rights-of-way management and fees are overblown, as shown by the small number of court cases (only about a dozen nationwide in the three years since the 1996 Act). With 38,000 municipalities nationwide and thousands of phone companies, this number of cases indicates that the system is working, not that it is broken.

Finally, we are surprised that you suggest that the combined Federal, State, and Local tax burden on new phone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons, please reject the proposed rule and take no action on rights-of-way and taxes.

Sincerely,



Lori DeLuca
Mayor

C: Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Commissioner Susan Ness
Ms. Magalie Roman Salas, Secretary, FCC
Mr. Jeffrey Steinberg, Wireless Telecommunications Bureau
Mr. Joel Tauenblatt, Wireless Telecommunications Bureau
International Transcription Services
Mr. Kevin McCarty, U.S. Conference of Mayors

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Ms. Barrie Tabin, National League of Cities
Mr. Robert Fogel, National Association of Counties
Mr. Lee Ruck, NATOA
Mr. Thomas Frost, BOCA International



2121 Cross Timbers Road
Flower Mound, Texas 75028

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